

Appl. No. 10/522,572
Amendment dated: December 29, 2008
Reply to OA of: September 29, 2008

As noted in MPEP §804, under B Between Copending Applications-Provisional Rejections 1, Non-statutory Double Patenting Rejections it is stated that if a "provisional" non-statutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the Examiner should withdraw the rejection and permit the earlier-filed application to issue as a patent without a Terminal Disclaimer. It is believed that this is the situation in the present case and the present application should be allowed without the requirement of a Terminal Disclaimer.

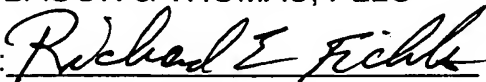
As reflected in the USPTO records, the filing date of the present application is January 28, 2005 which is earlier than the co-pending application filing date of July 14, 2005. The present application is solely rejected on the grounds of obviousness-type double patenting in provisional rejections whereas the co-pending application has been rejected in view of lack of novelty and obviousness over the prior art.

Thus, in accordance with MPEP, the provisional obviousness-type double patenting rejection should be withdrawn and the present application passed to issue.

In addition, the earlier filed Information Disclosure Statement on December 2, 2008 should be taken into consideration and the art cited therein be made of record in the present application.

In view of the above comments, early and favorable reconsideration of the rejection is most respectfully requested and the present application should be issued in accordance with MPEP §804.

Respectfully submitted,
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